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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35291

**STERLITE (USA), INC.
– ACQUISITION AND OPERATION EXEMPTION –
COPPER BASIN RAILWAY, INC., LINE
IN PINAL AND GILA COUNTIES, AZ**

**REPLY OF STERLITE (USA), INC.,
TO
SUPPLEMENT TO REPLY IN OPPOSITION
OF ASARCO INCORPORATED
AND AMERICAS MINING CORPORATION
TO VERIFIED NOTICE OF EXEMPTION**

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Counsel for Sterlite (USA), Inc.

Dated: September 1, 2009

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In proceedings before the United States Bankruptcy Court for the Southern District of Texas,¹ ASARCO Incorporated and Americas Mining Corporation (together, “Parent”) have attempted to persuade the court that Sterlite’s acquisition of the rail assets of Copper Basin Railway, Inc. (“CBRI”), as provided in the reorganization plan presented to the court by ASARCO LLC (“Debtor”) would require a lengthy and uncertain regulatory process before the Board.² All of Parent’s actions in this exemption proceeding³ have been taken with the aim of creating the very delay and uncertainty that it has predicted to the court. Parent’s latest step in pursuit of that goal is its filing on August 31, 2009, of the Supplement to Reply in Opposition of ASARCO Incorporated and Americas Mining Corporation to Sterlite (USA), Inc. – Acquisition and Operation Exemption – Copper Basin Railway, Inc., Line in Pinal and Gila Counties, AZ,

¹ *In re ASARCO LLC*, No. 05-21207 (Bankr. S.D. Texas petition filed Aug. 9, 2005).

² Parent has submitted an alternative reorganization plan to the court, under which Parent would resume control of Debtor and thus of Debtor’s wholly owned subsidiary, CBRY.

³ And in a related declaratory order proceeding. *See ASARCO Inc. – Petition for Declaratory Order*, STB Finance Docket No. 35286 (STB served Aug. 21, 2009).

Verified Notice of Exemption of Sterlite (USA), Inc. Pursuant to 49 C.F.R. §§ 1150.31-1150.34 (“Supplement”).

Parent’s Supplement suggests that the Notice of Exemption filed by Sterlite in this proceeding was defective because it “contains none of the information required by 49 C.F.R. § 1150.33(h).” Supplement at 3. It further suggests that the letter filed by Sterlite’s counsel in this proceeding on August 19, 2009, explaining that 49 C.F.R. § 1150.33(h) was inapplicable to this case, was an “improper[] attempt[] to amend [Sterlite’s] Verified Notice of Exemption,” which notice remains “defective.” *Id.* at 1, 4. Parent concludes that the Notice “should be rejected or suspended” until it is “supplemented with a verified pleading that allows for appropriate review and challenge.”⁴ *Id.* at 5.

Parent’s Supplement serves no purpose other than an effort to delay these proceedings. The language of 49 C.F.R. § 1150.33(h) is clear: it only requires submission of information regarding interchange limitations “if a proposed acquisition or operation of a rail line or change of operators involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (‘interchange commitment’)” (emphasis added). There is no requirement that the notice of exemption contain information about interchange limitations that do not exist, and the undersigned counsel have conducted due diligence, including review of the transaction documents and consultation with relevant personnel at the railroad, and have found no indication that there is, or would be as a

⁴ Parent’s request for suspension of the Notice is somewhat surprising, as Parent has told the bankruptcy court (citing a nonexistent decision of the Board) that the Board has already suspended it. *See* Exhibit A hereto.

result of the transaction, any interchange restriction that would bring the transaction within the scope of 49 C.F.R. § 1150.33(h).

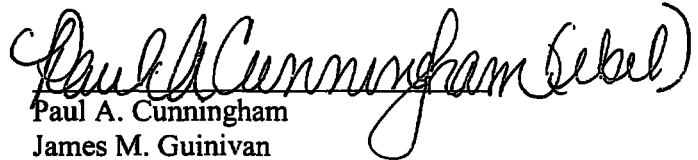
Parent claims that the assertions of Sterlite's counsel that there are no interchange limitations of the sort described in 49 C.F.R. § 1150.33(h), are "incorrect," but it provides no basis for this claim. As a participant in the bankruptcy proceeding, Parent has access to the Settlement and Purchase and Sale Agreement under which Sterlite proposes to acquire CBRY's rail lines, as well as other relevant transaction documents. If there were any interchange limitations in those documents, Parent could readily have pointed them out to the Board. But since there are no such limitations, all that Parent can point out is what – based on its hypertechnical (and incorrect) reading of the Board's rules – it characterizes as a defect in the Notice of Exemption.⁵ The Board should give no consideration to claims brought by Parent, not to advance the interests of shippers or connecting carriers, but to create confusion and delay.

⁵ Parent's concern for the technicalities of those rules stands in sharp contrast to its cavalier approach to the facts regarding these proceedings, as exemplified by its false representation to the bankruptcy court that the Board had suspended Sterlite's Notice of Exemption and its citation of a nonexistent Board decision to that effect.

CONCLUSION

The Board should dismiss Parent's Supplement and deny its request that the Board reject or suspend Sterlite's Notice of Exemption.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Cunningham (Sebel)".

Paul A. Cunningham

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Counsel for Sterlite (USA), Inc.

Dated: September 1, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of September, 2009, served copies of the foregoing Reply of Sterlite (USA), Inc.. to Supplement to Reply in Opposition of ASARCO Incorporated and Americas Mining Corporation to Verified Notice of Exemption by e-mail upon the following:

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